

DOCUMENT RESUME

03616 - [A2633743]

[Determination to Set Aside Procurement and Award Contracts under the 8(a) Program]. B-189958. September 15, 1977. 2 pp.

Decision re: Industrial Maintenance Services, Inc.; by Paul G. Dembling, General Counsel.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law II.

Budget Function: General Government: Other General Government (806).

Organization Concerned: Department of the Army: Fort Monroe, VA.

Authority: Small Business Act, sec. 8(a) (15 U.S.C. 637(a)).

E-189633 (1977). E-188043 (1977).

The protester objected to the award of a contract for custodial services to any other firm and to the agency's use of any option other than the exercise of the protester's option to renew its current contract. The determination to set aside procurements and to award contracts under section 8(a) of the Small Business Act was a matter for the contracting activity and the Small Business Administration, and the protest related to it was not reviewed by GAO. (Author/SC)

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DECISION



R. F. Johnson
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**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-189958

DATE: September 15, 1977

MATTER OF: Industrial Maintenance Services, Inc.

DIGEST:

1. Determination to set aside procurements and to award contracts under section 8(a) of Small Business Act is matter for contracting activity and SBA, and protest related thereto will not be reviewed by GAO.
2. GAO will not review protest by incumbent contractor concerning whether agency should exercise option quantity because it is inherent in a unilateral option provision that there is no obligation on the part of the Government to renew contract and such determinations are solely within the Government's discretion.

Industrial Maintenance Services, Inc. (Industrial) protests any contract award to any other firm for custodial services at Fort Monroe, Virginia.

The protester is the incumbent and its contract contains an option provision which entitles the Government to renew it. Apparently, the Small Business Administration (SBA) has notified Industrial that it is considering whether to recommend that the option to renew not be exercised and award be made to a minority firm under its "8(a) program." Industrial objects both to such action and any new contract award other than the exercise of the option to renew in its current contract. The protester claims that, historically, SBA has not procured under its 8(a) program where the current contract contains an option to extend.

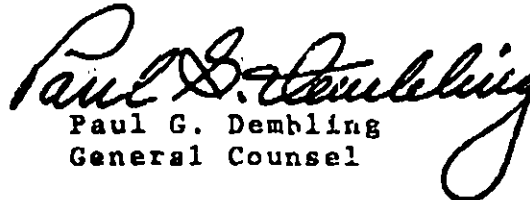
Section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1970), authorizes the SBA to enter into contracts with any Government agency having procurement powers, and

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the contracting officer of such agency is authorized "in his discretion" to let the contract to the SBA upon such terms and conditions as may be agreed upon between the SBA and the procurement activity. In view of the broad discretion afforded under the Act, we believe that a determination to set aside a procurement and to award a contract under section 8(a) of the Small Business Act is for the contracting agency and the SBA and will not be reviewed by our Office. Trans-American Services, Inc., B-189633, August 19, 1977, 77-2 CPD ____.

Moreover, GAO does not consider a protest by an incumbent contractor as to whether a procuring agency should exercise its unilateral contract option instead of issuing a new solicitation. C. G. Ashe Enterprise, B-188043, March 7, 1977, 77-1 CPD 166. There is no obligation on the Government to renew such a contract and such determinations are solely within the procuring agency's discretion. Although the protester alleges that SBA would be departing from its usual practice if in the circumstances custodial services were procured pursuant to its 8(a) program, the firm has not presented any legal basis for questioning SBA's actions.

Accordingly, the protest is dismissed.


Paul G. Dembling
General Counsel